



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants to dispute a rent increase.

The Tenants and Landlord appeared for the hearing and provided affirmed testimony. Both parties confirmed receipt of each other’s evidence packages.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence on the issue of the rent increase only, make submissions to me, and cross examine the other party on the evidence provided.

### Issue(s) to be Decided

- Has the Landlord followed the rent increase provisions of the Act?
- What is the amount of rent increase to be paid by the Tenant and when is this increase to take effect?

### Background and Evidence

A copy of the tenancy agreement was provided into evidence, which shows that the tenancy started on December 1, 2019. Monthly rent was set at \$1,900.00 and is due on the first of the month. The tenancy agreement is month-to-month, as laid out in the written agreement.

The Tenants stated they received this most recent Notice of Rent Increase (the Notice) sometime in August 2021, and it was set to take effect January 1, 2022, with a rent

increase of \$50.00/month. The Tenants stated that, as per the rent increase regulations, the maximum amount the Landlord could raise the rent to was \$28.50, effective January 1, 2022. The Tenants pointed out that rent increases have been frozen during COVID, and despite this, the Landlord has attempted twice to raise rent. This dispute is about the most recent rent increase for \$50.00 effective January 1, 2022.

The Tenants stated that they paid the \$50.00 rent increase, starting January 2022, and paid rent in the amount of \$1,950.00 per month for January and February 2022, as an act of good faith, even though they don't agree with it. The Tenants do not agree that the term in the initial tenancy agreement means they consented to an annual rent increase of \$50.00.

The Landlord pointed to the tenancy agreement provided into evidence, and stated that the Tenants have agreed to a \$50.00 annual rent increase as part of their tenancy agreement. The Landlord stated that after the last hearing about rent increases, in February 2021, the Landlord issued a Notice, trying to increase rent by \$50.00, effective August 1, 2021. The Landlord believed that the Decision from February 22, 2021, gave an order that allowed him to issue the rent increase in this manner.

The Landlord stated that, after issuing the first Notice in February 2021, he became aware that the rent increase was frozen until January 1, 2022, and so he re-issued the Notice on August 17, 2021, to take effect January 1, 2022, for \$50.00. The Landlord feels he is allowed to increase the rent by more than 1.5% because the Tenants agreed to an annual increase of \$50.00 when they signed the tenancy agreement.

### Analysis

Part 3 (Sections 40 through 43) of the Act and Part 4 (Sections 22 and 23) of the Regulations provide for rent increases. The Act provides that any rent increase must be accomplished by the landlord serving the tenant with a Notice of Rent Increase form and serving it to the tenant at least three months before the rent increase is to take effect. The Act also provides that the rent must not be increased by more than the allowable "annual rent increase" unless the landlord has the tenant's written consent or the authority of an Arbitrator pursuant to an Application for Additional Rent Increase.

I note the following portions of the Act:

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase

43 (1) A landlord may impose a rent increase only up to the amount

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

I also find there are relevant portions of Policy Guideline 37, as noted below:

A. LEGISLATIVE FRAMEWORK

*The Legislation permits a landlord to impose a rent increase up to the amount*  
*(a) calculated in accordance with the regulations,*  
*(b) ordered by an arbitrator on application<sup>1</sup>, or*  
*(c) agreed to by the tenant in writing.*

*A tenant's rent cannot be increased unless the tenant has been given proper notice in the approved form at least three months before the increase is to take effect. The tenant's rent can only be increased once every 12 months. A rent increase that falls within the maximum amount permitted by the applicable Regulation cannot be disputed at a dispute resolution proceeding.*

#### ***D. TENANT MAY AGREE TO A RENT INCREASE GREATER THAN THE MAXIMUM ALLOWABLE PERCENTAGE AMOUNT***

*A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. If the tenant agrees to an additional rent increase, that agreement must be in writing. The tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase.*

*The landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases. The landlord must issue to the tenant a Notice of Rent Increase. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant. Tenants must be given three full months' notice of the increase.*

*Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.*

I have reviewed the testimony and evidence on this matter. The Landlord has previously attempted more than once to increase rent. However, he stated that his costs have gone up significantly, and he denies he is being unfair. I note the parties had a previous dispute resolution regarding a different Notice with similar amounts. I note the Landlord feels he is entitled to raise rent by \$50.00 because he feels the Tenants agreed to a \$50.00 annual increase when they entered into the tenancy agreement in December 2019. However, after reviewing that tenancy agreement, I note it was a month-to-month tenancy, and it also included the following term in the addendum:

“Tenant will pay rent \$1,900.00 each month Tenant each or both will be responsible for unpaid rent rent will be increase \$50.00 automatically by term”

I note the Tenants do not agree that this term means they consented to an annual rent increase of \$50.00. I have considered the positions of both parties, including what was specified in the tenancy agreement, and I find the above noted term, as laid out on the addendum/attachment to the tenancy agreement lacks sufficient clarity and detail. I find there is insufficient evidence that the Tenants agreed to an annual increase of \$50.00, as the Landlord asserts. I do not find the tenancy agreement provides for this, as it only refers to an increase of \$50.00 “automatically by term”.

Also, I note the term of the tenancy agreement was only month-to-month, and no further tenancy agreements were signed by the parties. The above term does not clearly lay out an annual basis for a rent increase, and it also refers to an “automatic” increase, which contravenes the Policy Guidelines noted above, which stated that the Landlord must still comply with the Notice and timing requirements of the Act when increasing rent, even if it is agreed to ahead of time. The Guideline shows that even if the parties agree to an alternative rent increase, it is not “automatic” as the term in the addendum specifies. I find the above noted term in the tenancy agreement does not comply with the Act and the Guidelines, and is not enforceable. Further, it is not clearly written.

Further, I note the Landlord stated the arbitrator at the previous hearing “ordered” that he serve the Notice in the manner he did. However, after reviewing that decision, I find this is an inaccurate representation of what was included in that decision. I do not find any such “order” was made. Rather, it appears the Landlord was given a series of options, with different potential implications. I do not find the arbitrator at the previous hearing made any specific orders about this rent increase being allowed or authorized.

I find the only allowable legal way to increase rent in this case was for the Landlord to issue a Notice of Rent increase to the Tenants at least 3 months prior to January 1, 2022, which is when the rent freeze ended. The Landlord appears to have done this, but for the incorrect amount. The allowable annual rent increase for 2022 is 1.5%, which means the Landlord could only have increased rent from \$1,900.00 to \$1,928.50, effective January 1, 2022. However, as per the rent increase provided into evidence, I note the Landlord tried to raise rent by \$50.00, effective January 1, 2022. I find this was an improper rent increase.

Based on the foregoing and pursuant to the Act, I find and order that the Tenants’ rent increase will be \$28.50, effective January 1, 2022, not \$50.00 as listed on the most

recent Notice. Rent is set at \$1,928.50, as of January 1, 2022, until such time as it can be legally increased again.

I note the Tenant paid \$1,950.00 for January and February 2022, which I find is a rent overpayment in the amount of \$43.00. The Tenants are entitled to recover this amount. Also, as the Tenants were successful in this matter and the Landlord has not followed the rent increase provisions of the Act, I award the \$100.00 filing fee to the Tenants pursuant to my authority under Section 72(1) of the Act. In total, the Tenants are owed \$143.00 for the above noted items. The Tenants are able to obtain this relief by deducting \$143.00 from the next installment of rent pursuant to Section 72(2) (a) of the Act. The Tenants may want to attach a copy of this Decision when making the reduced rent payment.

### Conclusion

The Landlord has failed to follow the rent increase provisions of the Act. The Tenants are to pay rent in the amount of \$1,928.50, effective January 1, 2022. The Tenant is also granted his filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 14, 2022

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Residential Tenancy Branch